

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,) CASE NO. 1:21-CV-0564
)
Plaintiff,) JUDGE CHRISTOPHER A. BOYKO
)
v.)
)
)
REAL PROPERTY LOCATED AT 100)
MOUNTAIN VIEW DRIVE, MORELAND)
HILLS, OHIO, <i>etc. et al.</i> ,)
)
Defendants.)

**UNITED STATES' REPLY TO SELECT HOMES OF NORTHEAST OHIO LTD'S
BRIEF IN OPPOSITION TO UNITED STATES' MOTION FOR A STAY**

NOW COMES plaintiff, the United States of America, by and through Bridget M. Brennan, Acting United States Attorney and Henry F. DeBaggis, Assistant U.S. Attorney, and respectfully submits the within United States' Reply to Select Homes of Northeast Ohio Ltd.'s Brief in Opposition to United States' Motion for a Stay. (R. 22: Brief in Opposition, PageID 185).

On May 19, 2021, the United States filed a Motion for a Stay of this civil forfeiture proceeding pending the return of an indictment and resolution of a parallel criminal investigation. (R. 19: Motion, PageID 174). The motion included a verifying affidavit by government counsel and was made pursuant to 18 U.S.C. § 981(g)(1) which provides:

(g)(1) Upon the motion of the United States, the court shall stay the civil forfeiture proceeding if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related criminal investigation or the prosecution of a related criminal case.

The related criminal investigation remains ongoing and the reasons the Government filed its Motion for a Stay remain the same.

On May 25, 2021, Intervenor Select Homes of Northeast Ohio Ltd. (“Select Homes”) filed its opposition to the Government’s Motion for a Stay. (R. 22: Brief in Opposition, PageID 185). In a footnote, Select Homes states, “This opposition to the Government’s Motion for a Stay is specific to Select Homes, only. Select Homes does not oppose the United States’ Motion for a Stay, as concerns any other parties or claimants.” (*Id.*). Further, Select Homes states, “the reason for Select Homes’ intervention, is to foreclose on its perfected Mechanic’s Lien, at 100 Mountain View Drive, Moreland Hills, Ohio, PPN 913-06-011 and 913-06-005 (“100 Mountain View”), and reduce the Government’s interest in 100 Mountain View, to cash.” (*Id.*).

In addition, Select Homes states, “[o]nce intervention is granted, Select Homes desires to explore opportunities with the Government, to dispose of 100 Mountain View Drive, through the U.S. Marshall’s normal and ordinary course of disposing of real estate. Select Homes’ intervention will not include or implicate any civil discovery on the Government or on Eyton Senders and/or Mountain View, LLC, regarding the alleged Eyton Senders, Justen Balay Drug Trafficking Operation, or the alleged money laundering and other alleged complex financial transactions to hide alleged illicit drug proceeds.” (*Id.*, PageID 186).

The problem with Intervenor’s proposal is that the United States does not own the defendant property 100 Mountain View so Intervenor’s suggestion that the Court not include it in a Stay Order will not accomplish Select Homes’ financial objective. Claimant Eyton Senders, Corner Green LLC, 26 N. Laurel Avenue Property Holdings LLC, ES Global Real Estate

Holdings LLC and 100 Mountain View LLC filed Verified Claims (Doc. Nos. SEALED 5-10) on April 9, 2021, to the United States' Complaint in Forfeiture. The sealed Verified Claims include an ownership claim made by a Claimant for the defendant property 100 Mountain View. In addition, Claimants Eyton Senders, 100 Mountain View LLC, Corner Green LLC, ES Global Real Estate Holdings LLC, and N. Laurel Avenue Property Holdings LLC, have joined in the Government's Motion for a Stay "for the reasons stated previously in their Motion for a Protective Order." (R. 21: Response, PageID 182. *See also*, R. 4: Order, PageID 97).

Select Homes concerns for "the structure at 100 Mountain View Drive" suffering "extreme water intrusion, that is developing mold and mildew problems" and that it will "diminish the value of the structure" can be addressed by the defendant property's owner. (R. 22: Brief in Opposition, PageID 187). At this time, neither the United States or Select Homes have legal authority to enter the defendant property and make repairs. Repairs may be made by the property owner while this matter is pending and during any period of a stay if the Court determines that a stay is appropriate.

Prior to filing its brief in opposition, counsel for Select Homes contacted Government counsel to discuss the possibility of a resolution of its claim through foreclosure or an interlocutory sale of the subject property. Government counsel represented that the Government will be receptive to continuing discussions relating to this proposal. If the Government's Motion for a Stay is granted, the Government will continue to discuss a resolution with counsel for Select Homes, which will also require discussions and an agreement with counsel for the Claimant who filed a claim for 100 Mountain View.

As stated in its Motion for a Stay, the proposed civil discovery in the instant civil forfeiture action will adversely affect the ability of the Government to conduct the related

criminal investigation. This continues to be the case, and in fact, five (5) Claimants agree that, under the circumstances, a Stay Order is appropriate at this time; consequently, the Government respectfully requests that the Government's Motion for a Stay be granted.

WHEREFORE, the United States respectfully submits United States' Reply to Select Homes of Northeast Ohio Ltd.'s Brief in Opposition to United States' Motion for a Stay.

Respectfully submitted,

BRIDGET M. BRENNAN
Acting United States Attorney
Northern District of Ohio

By: /s/ Henry F. DeBaggis.
Henry F. DeBaggis (OH: 0007561)
Assistant United States Attorney
400 United States Court House
801 West Superior Avenue
Cleveland, Ohio 44113
(216) 622-3749
(216) 522-7499 facsimile
Henry.DeBaggis@usdoj.gov